S.B. CIVIL MISC. APPEAL NO.84/1993
(State & ors. Vs. Mangilal & ors.)

Date of Order :: 12.12.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.B.L.Bhati Additional Government Advocate for the appellants
Mr.Rajendra Charan for the respondents

This appeal under Section 30 of the Workmen's Compensation Act has been submitted against the order dated 28.01.1993 passed by the Workmen's Compensation Commissioner, Chittorgarh in Claim Case No.44/1992.

Perusal of the record shows that in this appeal, earlier the stay application was rejected on 16.04.1993. However, upon moving of an application for restoration and finding that another cognate matter involving identical question was pending, this Court passed a stay order on 26.08.1993 as follows:

> "Stay application was dismissed on 16.4.93 in default. An application has been moved on 15.5.93 for restoring the stay application to its original number for deciding it on merit.
>
> Having heard learned counsel for the petitioner and perused the application, the application is allowed and stay application is restored to its original number.
>
> Learned counsel for the petitioner states that an identical question arises in Civil Misc. Appeal No.83/93. Court has passed the following order:-

> "Meanwhile, the respondents are restrained from drawing the claim amount deposited before the Commissioner Workmen's Compensation, Chittorgarh."
>
> Learned counsel for the petitioner prays that an interim order may also be passed in the same terms in the present case.
>
> The prayer appears to be reasonable.
>
> It is therefore ordered that the respondents are restrained from drawing claim amount deposited before the Commissioner Workmen's Compensation, Chittorgarh until further orders.
>
> Fresh notices shall be issued, P.F. and notices be filed by learned counsel for the appellant within two weeks."

The facts of the case reveal that claim for compensation was made by the parents and wife of the deceased Shanker Lal Meena, about 20 years in age, said to have received fatal injuries while being engaged in canal construction work on Bassi Dam at village Ghosundi; and it was alleged that while digging trenches, eight labourers were buried for subsidence of the earth and two of them, Shanker Lal and Bhudar Jat died. The appellants denied the occurrence altogether and denied engagement of the deceased with them. The learned Commissioner while rejecting the case of the appellants found that the workman Shanker Lal died at and during the course of his employment and awarded compensation in the sum of

Rs.51,072/- to the claimants. It appears that another claim application No.43/1992 was made in relation to the death of other victim Bhudar Jat in the same incident; and that was also allowed by the Commissioner by a separate order of even date i.e. 28.01.1993. Another appeal being S.B. Civil Misc. Appeal No.83/1993 as referred in the aforesaid order dated 26.08.1993 was filed in relation to the said order passed by the Commissioner in claim case No.43/1992.

It has been the case of the appellants that the victims were not engaged with them and the incident as alleged never occurred and this question necessarily runs common to both these appeals i.e., the said CMA No.83/1993 and the present CMA No.84/1993. In both the cases, Workmen's Compensation Commissioner has rejected the defence taken by the appellants and has made varying awards of compensation in favour of respective claimants.

Upon the matter being taken up for hearing, it is noticed that both these appeals CMA Nos.83/1993 and 84/1993 were dismissed in default on 28.08.2001. However, so far the present appeal is concerned, a restoration application No.2447/2002 (DRJ) (later on numbered 14/2004) was moved after a delay of 230 days. After service of notice in the said restoration application and for non-appearance of the respondents-claimants, the application was allowed and this

appeal was restored to its original number. However, the Office has placed this appeal for hearing alongwith the record of other CMA No.83/1993 dismissed on 28.08.2001 with the report that said one was a decided case. It appears that the appellants have never taken care to get the said CMA No.83/1993 restored. Learned Addl. Government Advocate appearing for the appellants is also not in a position to say if at all any restoration application was moved in relation to the said appeal? The record of CMA No.83/1993 does also not indicate if it were restored ever.

The result obtainable with dismissal of CMA No.83/1993 is that finding on the basic fact about happening of incident as made in that case stands concluded against the appellants; and there cannot be two contradictory findings in relation to the same incident. The appellants are, therefore, not entitled to seek different finding in this appeal in relation to the same incident.

Record of the case further shows that after dismissal of the present appeal in default, the claimant Mangilal moved an application for releasing the amount of compensation deposited by the appellants; and by way of disbursement order dated 26.02.2004, the Commissioner proceeded to release the amount of Rs.52,604/- lying in deposit in this case in favour of the claimant Mangilal. This disbursement

order was made on 26.02.2004, the very date on which this appeal was restored, obviously unawares of the order of restoration made by this Court that very day.

The resultant position is that the claimant has already been made payment of the compensation amount and the finding in relation to the incident in question stands concluded against the appellants because of dismissal of CMA No.83/1993. Nothing further survives for consideration in this appeal.

The appeal is, therefore, dismissed. No costs.

(DINESH MAHESHWARI), J.

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